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BEFORE THE ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION

JIM IRVIN
COMMISSIONER-CHAIRMAN
TONY WEST
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE TELECOMMUNICATIONS
ACT OF 1996.

DOCKET NO. T-00000B-97-0238

PROCEDURAL ORDER

BY THE COMMISSION:

On May 27, 1997, the Arizona Corporation Commission ("Commission") issued Decision No. 60218 in the above-captioned matter. Decision No. 60218 described the process by which U S WEST Communications, Inc. ("U S WEST") would submit information for the Commission to review and recommend to the Federal Communications Commission ("FCC") whether U S WEST meets the requirements of § 271 of the Telecommunications Act of 1996. Our June 16, 1998 Procedural Order authorized additional discovery and responses to replies and comments.

On February 8, 1999, U S WEST filed a Notice of Intent to File with FCC and Application for Verification of § 271(c) Compliance ("Application"), and a Motion for Immediate Implementation of Procedural Order ("Motion"). U S WEST stated its intent to file an application with the FCC to obtain approval to provide interLATA service, no sooner than ninety days from the date of the filing. U S WEST requested that its Application be heard by the full Commission, and that the Commission issue a final Decision no later than July 12, 1999. U S WEST did not include any pre-filed testimony, and proposed simultaneous discovery by interested parties and U S WEST.

On February 16, 1999, AT&T Communications of the Mountain States, Inc. ("AT&T"), GST Telecom, Inc. ("GST"), Sprint Communications Company, L.P. ("Sprint"), Electric Lightwave, Inc. ("ELI"), MCI WorldCom, Inc., on behalf of its regulated subsidiaries, ("MCIW") and e-spire™ Communications, Inc. ("e-spire™") (collectively "Joint Movants") filed a Motion to Reject U S WEST's Application and Response to U S WEST's Motion ("Motion to Reject"). On February 18, 1999, the Residential Utility Consumer Office ("RUCO") filed a Motion in Response to U S WEST's Application and Motion. Joint Movants and RUCO requested that U S WEST be ordered to file with

1 the Commission all the information that it intends to file with the FCC, consistent with Decision No.
2 60218 and Procedural Orders. Joint Movants and RUCO requested that U S WEST's Motion be
3 rejected; that testimony be staggered; and that a hearing be held after U S WEST makes a complete
4 filing, with sufficient time for Movants and RUCO to analyze U S WEST's submittal before their
5 testimony is due. Joint Movants and RUCO requested that the Commission confirm that a hearing
6 will be held to determine if U S WEST has complied with § 271.

7 Joint Movants indicated unwillingness to provide discovery to U S WEST, claiming that "all
8 of the information necessary to prove whether U S WEST complies with the requirements of Section
9 271 is within U S WEST's possession and control."

10 On February 22, 1999, U S WEST filed a Response to the Joint Movants' Motion to Reject
11 and Reply in Support of its Motion. U S WEST stated that Joint Movants rely on FCC rules, which
12 should not apply here. U S WEST claimed that requiring it to pre-file testimony with its application
13 would freeze the evidence, preventing the Commission from giving a recommendation to the FCC
14 that is based upon a complete and current record.

15 On February 26, 1999, the Commission's Utilities Division Staff ("Staff") filed a Response to
16 U S WEST's Application and Motion. Staff requested that the Commission not reject U S WEST's
17 Application, but require U S WEST to supplement its Application with a copy of its case-in-chief,
18 including the information contained in its § 271 Application and copies of its direct testimony. Staff
19 proposed that the time period for Commission review should commence at the time the additional
20 information is docketed. Staff recommended that U S WEST be ordered to supplement its current
21 filing on or before March 30, 1999. Staff requested that U S WEST's proposal for simultaneous
22 filing of testimony by all parties be rejected, to allow other parties a reasonable opportunity to review
23 and seek discovery on U S WEST's case-in-chief before being required to file their responsive
24 testimony.

25 On February 26, 1999, Joint Movants filed a Reply in support of their Motion to Reject. Joint
26 Movants indicated that they are requesting that U S WEST be required to comply with the existing
27 Procedural Orders.
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1 U S WEST's Application does not comply with the requirements of Decision No. 60218.
2 Therefore, the ninety-days prior to its filing with the FCC has not commenced, and will not
3 commence until its filing to the Commission is complete. By its February 8, 1999 filing, U S WEST
4 has put the parties on notice of its intent to file for § 271 compliance with the FCC in the near future.
5 U S WEST's Application will be held in abeyance until U S WEST has filed its case-in-chief,
6 including direct testimony as to all issues. The parties may begin general discovery regarding U S
7 WEST's § 271 compliance, with more specific discovery to follow U S WEST's supplemental filing.
8 U S WEST will be allowed to pursue discovery to the extent necessary to demonstrate that it has met
9 § 271 requirements. Confidentiality arrangements may be made, where appropriate.

10 In order to bring resolution to this Docket, especially as discovery may be pursued herein, we
11 will order U S WEST to file its case-in-chief by April 12, 1999, or be considered to have withdrawn
12 its Application. If additional time will be needed, U S WEST should request it in sufficient time
13 prior to the expiration of the deadline for all parties to respond. U S WEST may file its case-in-chief
14 regarding each checklist item as it is completed, but the filing, and the ninety day period established
15 in Decision No. 60218, shall not commence until the filing is complete as to all the items.

16 Discovery timelines shall be as directed in the June 16, 1998 Procedural Order. An
17 evidentiary hearing will be set after U S WEST completes its § 271 filing with the Commission.

18 IT IS THEREFORE ORDERED that U S WEST's Motion for Immediate Implementation of
19 Procedural Order shall be, and is hereby, denied.

20 IT IS FURTHER ORDERED that U S WEST's Application is determined to be insufficient
21 and not in compliance with Decision No. 60218. The Application shall be held in abeyance pending
22 supplementation with U S WEST's case-in-chief, including direct testimony, pursuant to Decision
23 No. 60218 and the June 16, 1998 Procedural Order.

24 IT IS FURTHER ORDERED that U S WEST's obligation to file its full and complete
25 application ninety-days prior to filing with the FCC shall not be considered to be satisfied until the
26 Application has been supplemented in accordance with Decision No. 60218.

27 IT IS FURTHER ORDERED that U S WEST shall have completed its supplementation of its
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1 Notice by April 12, 1999, or shall be deemed to have withdrawn its Application. If additional time
2 will be needed, U S WEST shall request it in sufficient time prior to the expiration of the deadline for
3 all parties to respond.

4 IT IS FURTHER ORDERED that general discovery regarding U S WEST's § 271
5 compliance may proceed at this time, with specific discovery to follow upon U S WEST's
6 supplementation of its Application.

7 IT IS FURTHER ORDERED that U S WEST will be allowed to pursue discovery to the
8 extent necessary to demonstrate that it has met § 271 requirements.

9 IT IS FURTHER ORDERED that discovery shall be permitted by law and the rules and
10 regulations of the Commission, except that: any objection to discovery requests shall be made within
11 seven days¹ of receipt; responses to discovery requests shall be made within ten days of receipt; and
12 the response time may be extended by mutual agreement of the parties involved if the request
13 requires an extensive compilation effort.

14 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
15 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
16 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
17 request, a procedural hearing will be convened as soon as practicable; and that the party making such
18 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the
19 hearing provide a statement confirming that the other parties were contacted.²

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26 ¹ "days", in reference to discovery, refers to calendar days.

27 ² The parties are encouraged to attempt to settle discovery disputes through informal,
28 good faith negotiations before seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that an evidentiary hearing and procedural schedule shall be set
2 upon U S WEST's supplementation of its Application, in accordance with Decision No. 60218.

3 DATED this 2nd day of March, 1999.

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6 
7 JERRY L. RUDIBAUGH
8 CHIEF HEARING OFFICER

9 Copies of the foregoing mailed/delivered
10 this 2nd day of March, 1999, to:

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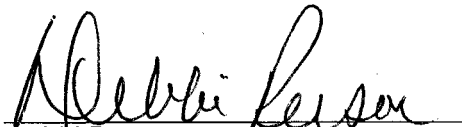
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